

**STATE OF HAWAI'I**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
Honolulu, Hawai'i

November 16, 2007

**Board of Land and  
Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i**

**REGARDING:** Appointment and Selection of a Hearing Officer to Conduct All Hearings  
for One (1) Contested Case Hearing

**SUBJECT PETITIONS:** **Docket No. KA-08-05** Petition requesting the Board of Land and Natural  
Resources for a Contested Case regarding Enforcement Case KA-06-77.

**BACKGROUND**

On October 12, 2007 the Board of Land and Natural Resources (BLNR) heard a report from the Office of Conservation and Coastal Lands (OCCL) on Enforcement File No. KA-06-77 which recommended that landowner David Anawalt be found in violation of Chapter 13-5 of the Hawai'i Administrative Rules (HAR), and Chapter 183C, Hawai'i Revised Statutes (HRS), of the Conservation District Rules in regards to the unauthorized construction of a tension wire fence within the Conservation District at Hā'ena, Hanalei District, Kaua'i, TMK (4) 5-9-02:31. OCCL recommended that the fence be removed and fined the landowners \$2500.

On October 5, 2007 the Office of Coastal and Conservation Land received a petition for a Contested Case Hearing from representative to the landowner Roy A. Vitousek of Cades Schutte.

**AUTHORITY FOR DESIGNATING HEARING OFFICERS**

HAR §13-1-32 (d) provides that the BLNR may conduct the Contested Case Hearing, or at its discretion, may appoint a hearing officer to conduct the hearing. HAR §13-1-29 (a) provides that, *the time for making an oral or written request and submitting a written petition may be waived by the Board.*

Additionally, HRS §92-16 and §171-6 also provide that the Board may delegate to the Chairperson the authority to select the hearing officer to conduct a Contested Case Hearing.

**BASIS FOR DESIGNATING HEARINGS OFFICERS**

Conducting a Contested Case Hearing may involve: giving notice of hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings,

fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of a hearing. History suggests that designating a Hearing Officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

**DISCUSSION:**

Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. The determinations of standing have not yet been made. Staff believes that the preliminary hearing on standing should also be conducted by the Hearing Officer rather, than the full Board. After the Hearing Officer conducts the preliminary hearing on standing, the Board would still retain its discretion in issuing Orders on this matter of standing. Further, should standing be granted, at the conclusion of the case, the Board would act with its own discretion on the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

Staff therefore recommends,

**RECOMMENDATION:**

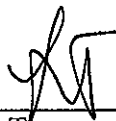
- 1) That the Board authorize the appointment of a Hearing Officer for CC KA-08-05, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested case Hearing, and
- 2) That the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



S. Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



LAURA H. THIELEN, Chair  
Board of Land & Natural Resources